IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.3160 OF 2006

Sarpanch, Grampanchayat,
Thoseghar, At Post Thoseghar,
Taluka and District:Satara .. Petitioner.
(Orig. Deft.No.1)

Vs

1. Shri Kedarnath & Bahirdev
Devasthan Trust, Thoseghar,
Taluka & District Satara
through its trustees.. ...

(a) Shri Maruti Gorkhu Chavan,
(b) Shri Bapurao Yashwant Chavan..

2. Kondiba Ganpat Chavan,
resident of Thoseghar.. .. Respondents
(No.1-Orig.Plff.
No.2-Orig.Deft-2)

Mr R.G.Ketkar, for the petitioner.

Mr G.S.Godbole, senior advocate, a/w Mr Ajit Kenjale for respondent no.1(a)&(b)

Mr M.H.Solkar, AGP for the respondent.

CORAM : D.B.BHOSALE,J.
DATE : 08.09.2006
ORAL JUDGMENT:

1. Heard the learned counsel for the parties.

2. Rule. Returnable forthwith. Mr.Godbole, learned counsel, waives service for respondent no.1-Devasthan Trust. By consent, rule is heard forthwith.

3. This petition is directed against the order dated 28.4.2006 passed by the learned District Judge, Satara,

on the application at Exhibit-5 in Misc Civil Appeal No.59 of 2006, by which the petitioner-defendant no.1 is restrained from carrying out any construction in the suit property, particularly the open space in front of Janai Devi and Kedarnath temple till the disposal of the appeal. The appeal has been preferred against the order dated 18.3.2006, by which the trial court rejected the application at Exhibit-5 in Regular Civil Suit No.102 of 2006.

4. This Court, (B.H.Marlapalle, J.) on 7.6.2006, after hearing the learned counsel for the parties appointed the DILR, Satara Taluka as the Court Commissioner and directed him to visit village Thoseghar in Satara Taluka and inspect the suit land as well as the record of the village Panchayat and submit a report within three weeks from the date of the order. The relevant observations in the order dated 7.6.2006 read thus:

> By the impugned order practically the appeal has been decided by the learned District Judge. It is the contention of the defendant-Village panchayat that the suit land on which the construction is proposed is its property and the plaintiff-Devasthan has no title to claim injunction against it, whereas in the impugned order the learned District Judge has observed that till 1980-81 the open space in front of the temple is

> shown in the name of the Devasthan in the village Panchayat record. This controversy regarding the title to the suit plot even for prima facie purpose can be decided by appointing Court Commissioner.
>
> The DILR, Satara Taluka, is hereby appointed as the Court Commissioner and he shall visit village Thoseghar in Satara Taluka within two weeks from today and on inspection of the suit land as well as the record of the village Panchayat submit a report within three weeks from today to this Court.
>
> S.O. for three weeks. The learned AGP to communicate this order to the Collector, Satara who in turn will direct the DILR to act as the Court Commissioner. Needless to mention while inspecting the site and the record, both the parties will remain present and will be at liberty to produce documents."

The DILR, has placed his detailed report with the map on record. It is against this backdrop, the learned counsel for the parties prayed for hearing of the writ petition on merits. I heard them both for quite some time, and with their assistance went through the entire material placed before me.

5. Mr Ketkar, learned counsel for the petitioner, at the outset, invited my attention to the observations made in the impugned order dated 28.4.2006 to contend that the order is based only on two entries in the revenue record/ the Grampanchayat

record of the years 1958-59 and 1980-81 to hold that the suit land on which the questioned construction was going on stands in the name of respondent no.1-Devasthan Trust (for short, "the Trust"). He further submitted that the relevant revenue entries show the open space on all sides of the temple, but it does not specify the extent of the open space and, therefore, the suit land cannot be said to be owned by the Trust, merely because it is in front of the temple. In other words, according to Mr Ketkar, there exists the open space around the temple but the questioned structure is not on the open space referred to in the record of 1958-59 and 1980-81. He then invited my attention to the various documents on record to contend that on the suit land admeasuring 9125 sq.meters (for short, "the said land") claimed by the Trust, the Grampanchayat has 5-6 structures/buildings since last several years, being used for different purposes. He submitted that even the questioned construction is being erected at the very same site where the Grampanchayat had its old school building and that the construction of the said old building was not objected to by the Trust. He then submitted that when all the aforesaid buildings were being constructed by the Grampanchayat, at no point of time the Trust took any objection. The said

land, according to the Grampanchayat, was allotted to them by the order of the Government in 1950 and, since then, it is shown as "Gaothan". Lastly, Mr Ketkar invited my attention to the Schedule-I maintained under rule 5, viz. register of the public Trust, and submitted that the suit land does not figure therein as that of the Trust.

. On the other hand, Mr Godbole, learned counsel for the Trust, invited by attention to the Gram-panchayat record of the years 1958-59 and 1980-81 to contend that it clearly shows that the said land and in particular the open space in front of the temple belong to the Trust and the learned District Judge has rightly relied upon those two entries to pass the impugned order. He further submitted that the other structures put up by the Grampanchayat on the said land was permissive use and it cannot claim any right over the remaining open space belonging to the Trust. He then submitted that the power of superintendence under Article 227 of the Constitution of India cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal. In other

words, he submitted that at the most this Court can direct the appeal court to decide the appeal within timeframe and cannot interfere with the order impugned in the present writ petition under Article 227 of the Constitution of India. In support of this contention, he placed reliance upon the judgment of the Supreme Court in **Estralla Rubber Vs. Dass Estate (P) Ltd, (2001) 8 Supreme Court Cases 97 and Babhutmal Raichand Oswal Vs. Laxmibai R Tarte and anr, AIR 1975 Supreme Court 1297**.

6. It is true that this Court is not expected to convert itself into a court of appeal since the statutory appeal is pending before the learned District Judge. However, it is well settled that if the discretion exercised by the court below is unreasonable and not in a judicial manner, the fact that this court cannot take a different view, may justify interference with the discretion exercised by the court below. This court has sufficient powers to interfere with such order and, in my opinion, the instant case is one such case where the interference by this court is justified even at this stage. The impugned order, though may not finally and conclusively determine the rights of parties, has finality affecting the vital and valuable rights of

the petitioner. The order impugned is perverse and is not based on the material on record. In my opinion, grave injustice has been done by the impugned order not only to the Grampanchayat but even to the children taking education in the school being constructed on the said land. Prima facie, I do not find any evidence to justify the findings. Had the learned District Judge gone through the relevant material on record, perhaps, he would not have passed the impugned order. The judgments relied upon by the learned counsel for the respondents are of no avail to them, in view of the peculiar facts and circumstances of this case.

7. Before I consider the merits, it may be noticed that the Trust has filed the suit for injunction simplicitor restraining the petitioner-Grampanchayat from raising any construction on the said land. No other relief, such as declaration, is sought by them. The questioned structure is on front side of the temple but does not appear to be very close, on the open space around the temple. This Court vide order dated 7.6.2006 had directed the DILR, Satara to visit the site and submit a report based on the record of the village Panchayat. Accordingly, the report has been placed

on record. I perused the report with the assistance of the learned counsel for the parties. The report of DILR clearly supports the contentions of the petitioner and that has not been disputed by the learned counsel for the Trust. The map drawn by the DILR clearly shows some open space on all sides of the temple. The Gram Panchayat record for the years 1958-59 and 1980-81, on which heavy reliance was placed by the learned counsel for the respondent-Trust as also by the learned Judge while passing the impugned order, does show open space on all sides of the temple but the relevant entries do not specify the extent of the open space. Therefore, those entries in the revenue/Grampanchayat record may not help the Trust to claim title over the entire land admeasuring 9125 sq.meters. The register of public Trust does not show the land in dispute as that of the Trust. If the Trust claims that the land admeasuring 9125 sq.meters around the temple belong to them,they have not explained as to why it is not shown in the register of public Trust. The extract of the Public Trust register is placed on record. It shows, the Trust has other properties including some agricultural lands. Besides, admittedly the Grampanchayat has 4-5 different structures standing on the said land near and around the temple and those

structures were erected by the Grampanchayat long ago. No objection, as is raised for the first time in 2006 for the construction of school building, was ever raised by the Trust while putting up those structures on the said land. Even at the very same site, where the questioned structure was being erected, the Grampanchayat had old school building, where they were running Balwadi, Samaj Mandir and Primary School. The said old building was badly damaged in the last year's heavy rain and hence they decided to demolish the same and construct a new building at the very same site. According to the petitioner, even dimensions of new structure would be same. When the impugned order was passed, indubitably, the construction was in progress and it had reached the level of first slab and, therefore, the site cannot be used by the Trust, pending hearing of the suit. For more than 20-25 years the school building was standing at the very same place and it is not the case of the Trust that it ever obstructed the activities of the temple. The respondent did not object to the construction of the old school building and even when the existing structure was demolished for the purpose of erecting a new building of the school at the same place. The petitioners claim that the land on which they have several buildings, was

allotted to the Grampanchayat in 1950 and since then it has been used by the Gram Panchayat for the benefit of the villagers without any interruption/obstruction by the Trust. The Trust, according to the petitioners, do not have any document in support of their claim. The Sanad, referred to by the Trust to claim right over the suit land, has not been produced on record nor have they produced any other document making reference to the so-called Sanad. The learned District Judge failed to take this all into consideration while passing the impugned order and has simply relied upon the two entries in the revenue /Grampanchayat record to hold that the said land belongs to the Trust. In my opinion, the impugned order affects the vital and valuable rights of the Grampanchayat. The discretion exercised is unreasonable and, therefore, deserves to be interfered with under Article 227 of the Constitution of India.

8. It may be noticed that the Grampanchayat has placed on record an undertaking stating that in the event the suit instituted by the respondents is finally decided against them they will remove the construction carried out by it in the suit premises without claiming equities. The Grampanchayat has

passed a resolution to that effect. Mr Ketkar, learned counsel for the petitioner, across the bar, on instructions from his clients, submitted that the Grampanchayat will not hesitate to hand over the possession of the building as it is, if the Trust so desires, in the event they ultimately loose in these proceedings. Keeping that in view and considering the overall facts and circumstances of the case, as indicated above, this petition is allowed. Keeping in view that the dispute is between the Trust and the Gram Panchayat wherein the interest of not only children taking education in the school but of the entire village is involved, the trial Court shall endeavour to dispose of the suit as expeditiously as possible and preferably within a period of eight months from the date of receipt of this order.

9. In the result, the Rule is made absolute. The order impugned is accordingly quashed and set aside. No order as to costs.

10. The request of Mr Godbole, learned counsel for the respondent, for stay of this order for a period of four weeks is rejected.

(D.B.BHOSALE,J.)